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March 21, 1997

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William F. Caton
Acting Secretary
Room 222
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket No. 94-150 et al.
Attribution of Broadcast
and Cable/MDS Interests

Dear Mr. Caton:

Transmitted herewith on behalf of Qwest Broadcasting L.L.C. are an original and nine copies of its Reply Comments on the Commission's *Further Notice of Proposed Rule Making* in the above-referenced proceeding (FCC 94-436 released Nov. 7, 1996).

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

Enclosures

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 94-150
Regulations Governing Attribution)	
of Broadcast and Cable/MDS Interests)	
)	
Review of the Commission's)	MM Docket No. 92-51
Regulations and Policies)	
Affecting Investment)	
in the Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

REPLY COMMENTS OF QWEST BROADCASTING L.L.C.

Qwest Broadcasting L.L.C. ("Qwest"), by its attorneys, hereby responds to comments on the FCC's *Further Notice of Proposed Rule Making*, FCC 96-436 (released November 7, 1996) ("*Further Notice*"), in the above-captioned proceeding. Qwest's own experience demonstrates that the Commission's suggested "equity or debt plus" attribution proposal would hinder the entry of independent minority voices into the television market, and should be rejected. The Commission should continue to make attribution decisions on a case-by-case basis.

INTRODUCTION

Qwest is the owner of television stations WATL(TV), Atlanta, and WNOL-TV, New Orleans. QwestCom L.P. ("Qwestcom"), composed of five African-American and Hispanic

owners, wields de jure and de facto control of Qwest and its licensed stations.¹ While QwestCom holds all of Qwest's voting shares, Tribune Broadcasting Company ("Tribune") contributed 33 percent of Qwest's equity, in exchange for all of its outstanding nonvoting shares. In addition, Tribune contributed \$63 million in subordinated debt to Qwest, representing 43% of the venture's debt at its outset. Together, Tribune's debt and equity contributions constituted 42% of Qwest's total initial capitalization. Tribune also owns the licensees of television stations WGNX, Atlanta, and WGNO, New Orleans.

In the *Further Notice*, the Commission proposes that a greater than 33% equity and/or debt interest in a licensee be deemed attributable for purposes of the multiple ownership rules, where the holder of such an interest is a same-market broadcaster or the licensee's program supplier (the "equity or debt plus" proposal). Under this proposal, Tribune's interest in Qwest would not only be attributable, it would constitute a prohibited interest absent either relaxation of the television duopoly rule, or divestiture of Tribune's wholly owned stations in the Qwest markets, Atlanta and New Orleans.

As is now shown, such a result would do violence to, rather than promote, the objectives of the Commission's multiple ownership rules. The Tribune investment in Qwest has fostered economic competition, viewpoint diversity, and minority ownership in Atlanta and New Orleans, and it should be permitted to continue to do so.

¹ QwestCom's ultimate owners are Don Cornelius, Willie Davis, Quincy Jones, Geraldo Rivera, and Sonia Gonsalves Salzman.

I. THE “EQUITY OR DEBT PLUS” APPROACH SHOULD BE REJECTED AS TO SAME-MARKET BROADCASTERS.

The above-described “equity or debt plus” proposal rests on three incorrect assumptions. First, the FCC, and commenters who support its proposal, incorrectly presume that unless the interests in question are made attributable, viewpoint diversity and economic competition will be diminished, whereas in many instances such as Qwest’s case, the availability of such funding has promoted diversity and competition. Second, they incorrectly assume that a 33 percent equity or debt attribution benchmark will promote greater certainty and predictability, whereas in fact it could create uncertainty and unpredictability because such percentages may fluctuate over time. Finally, they wrongly assume that the “equity or debt plus” proposal will have no impact on the flow of capital to minority broadcasters, when in fact existing broadcasters have been the primary source of capital for minority broadcasters.

A. Non-Voting Equity or Debt Levels of Greater Than 33 Percent Can Foster, Not Harm, Diversity And Competition.

In the *Further Notice*, the FCC suggests that a 33 percent benchmark for debt, otherwise nonattributable equity, or debt and such equity combined, might be a reasonable predictor of influence significant enough to implicate the diversity and competition concerns which underpin the multiple ownership rules, if such interests in a licensee are held by either a same-market broadcaster or by the licensee’s program supplier.² One of the commenters, Media Access Project et al. (“MAP”), goes further: MAP cites the FCC’s decision approving Qwest’s

² *Further Notice* at 12.

acquisition of WATL and WNOL among several “which offend the very nature of the ownership limits and their underlying goal of promoting viewpoint diversity.”³

Qwest wishes to set the record straight: its operational experience is directly to the contrary. Tribune has exercised absolutely no control over the operation of Qwest’s stations, yet its investment has directly strengthened both viewpoint diversity and Qwest’s competitive position in its two markets.

As a passive investor, Tribune properly remains completely detached from Qwest’s day-to-day decisions regarding its stations’ personnel, programming, and finances — the three touchstones of control of a licensee.⁴ Qwest’s stations share neither personnel nor office or studio space with Tribune’s Atlanta or New Orleans stations. Nor do the Tribune and Qwest stations engage in joint sales, or joint program production of any kind. Indeed, Tribune’s management assiduously avoids even initiating contact with Qwest over station affairs. For its part, Qwest’s management sees to it that WATL and WNOL compete fully “and brutally” (in management’s own words) with Tribune’s WGNX and WGNO, and that the Qwest stations, both WB affiliates, provide a unique voice in Atlanta and New Orleans, with a strong focus on African-American viewers in those markets.

Despite Tribune’s hands-off approach, Qwest benefits from the Tribune relationship in several ways that contribute to the stations’ profitability. In dealing with vendors of broadcast

³ Comments of MAP at 4.

⁴ See, e.g., Review of the Commission’s Regulations Governing Attribution of Broadcast Interests, 10 FCC Rcd 3606, 3609 (1995) (“Attribution Notice”).

equipment, supplies and services, Qwest invokes Tribune's name to insist on receiving price discounts equivalent to those enjoyed by Tribune. In addition, Qwest has initiated the purchase of programming for its two stations, notably "A Different World," "Soul Train," and various movies, from Tribune's Atlanta and New Orleans stations. Finally, Tribune has made itself available to provide operations advice to Qwest upon request, primarily with respect to engineering issues, and Qwest has taken advantage of this opportunity on occasion. All these advantages accruing to Qwest by virtue of the Tribune investment contribute to Qwest's success as a separate broadcast voice in Atlanta and New Orleans, without in any way compromising Qwest's ability to operate its stations fully independent of Tribune.

In short, the record belies the presumption of improper influence that underlies the "equity or debt plus" proposal. As one commenter correctly observed,

The Commission's overly-simplistic proposal to adopt a bright-line test for analyzing such arrangements constitutes a *solution chasing a problem that has not been proven to exist*.

Comments of Pappas Stations Partnership at 2-3 (emphasis in original).

B. A 33 Percent Bright-Line Test for Debt Is Unworkable Because the Percentage of Total Licensee Debt Held by a Same-Market Broadcaster or Program Supplier Is Likely to Increase Automatically.

A "chief benefit" of its "equity or debt plus" approach, the Commission believes, is that "it would permit greater certainty and predictability . . ." by setting a specific numerical threshold for attributing the equity, debt, or combined equity and debt investment in a licensee of a same-

market broadcaster, or of a program supplier to the licensee. At least with respect to debt, this is simply not the case, as Qwest's history demonstrates.

As initially capitalized, Qwest borrowed approximately 57 percent of its debt from a consortium of banks, and the balance, some 43 percent, was in the form of unsecured subordinated convertible notes payable to Tribune. The bank debt is, of course, senior in right of payment to that held by Tribune; by the terms of Qwest's loan agreement with its bankers, the Tribune debt cannot be repaid without the banks' consent. Therefore, as Qwest has paid down its senior debt as required by the terms of its loan agreement, the percentage of total Qwest debt represented by the Tribune debt has necessarily risen and continues to rise, the more so because Qwest's success has enabled it to pay down senior debt faster than required. Thus, even assuming the Tribune debt had initially represented only 33 percent or less of Qwest's total debt, it would now constitute a greater percentage of that debt because of its subordinate status. Such increase is, of course, a matter wholly outside either Qwest's or Tribune's control.

Qwest's capital structure is not unique; indeed, it is common. Thus, the "equity or debt plus" approach would be unworkable for every licensee with more than one holder of debt securities, where the debt provided by a same-market broadcaster or program supplier is subordinate to one or more other forms of debt. *As such, the "equity or debt plus" approach provides no certainty at all to licensees or the Commission.* It is particularly unfortunate that under this approach, the greater the licensee's success in reducing senior debt, the more out of compliance with the 33 percent (or any other) threshold it will be. For this reason also, the "equity or debt plus" approach should be rejected.

C. Broadcasters Are An Important Source of Capital for Minority Broadcasters.

In the *Further Notice*, the FCC inquires whether its “equity or debt plus” approach would disproportionately affect small or minority entities.⁵ Based on Qwest’s experience, the answer must be yes.

In granting Qwest’s applications to acquire WATL and WNOL, the FCC characterized its approval as advancing the pool of minority participants in broadcasting, as “propelling minority ownership to a top-ten television market,” and, most significantly, as enhancing the diversity of broadcast voices.⁶ Under Qwest’s ownership of WATL and WNOL, all of these benefits have been fully realized. The Qwest stations are flourishing competitors in their markets, and strive to offer a unique program service that also attracts African-Americans. Thus, the FCC’s grant of Qwest’s applications has fostered economic competition, viewpoint diversity, and minority ownership.

Qwest’s acquisitions would not have been possible without Tribune’s substantial investment. Under the “equity or debt plus” proposal, however, that investment would have been precluded, because it exceeds the 33 percent threshold for a same-market licensee. Thus, Qwest agrees with those commenters who point out that “equity or debt plus” attribution would inhibit

⁵ *Further Notice* at 12.

⁶ Quincy D. Jones, 11 FCC Rcd 2481, 2486 (1995).

the flow of capital to the broadcast industry, and particularly to new entrants.⁷ To avoid this result, the Commission should continue to make attribution decisions on a case-by-case basis.

II. EXISTING ARRANGEMENTS SHOULD BE GRANDFATHERED IF “EQUITY OR DEBT PLUS” ATTRIBUTION IS ADOPTED.

If the Commission nevertheless determines to adopt its “equity or debt plus” proposal, those existing capitalization arrangements that are made impermissible should be grandfathered.⁸ Clearly, it is unfair to force those who structured their relationships based on existing precedents to refinance their stations to comply with the new rule.⁹ Indeed, the Commission acknowledges this fact in the Attribution Notice in this proceeding: “We are concerned that any action we take in this proceeding not inhibit capital investment nor disrupt existing financial arrangements”¹⁰ Therefore, all financing arrangements entered into before the release of the *Further Notice*, including those conditioned on the outcome of this proceeding, should be grandfathered.

⁷ See, e.g., Comments of BET Holdings Inc. at 2-3; Comments of Pappas Stations Partnership at 1.

⁸ Comments of Pappas Stations Partnership at 6.

⁹ Qwest, for example, filed its applications to acquire WATL and WNOL before the December 15, 1994, adoption of the initial Notice of Proposed Rule Making in this proceeding (Attribution Notice, 10 FCC Rcd 3606 (1995)). The “equity or debt plus” proposal first appeared nearly two years later, in the *Further Notice* released November 7, 1996.

¹⁰ 10 FCC Rcd at 3615.

CONCLUSION

The FCC should reject its "equity or debt plus" proposal. Qwest's own experience demonstrates unequivocally that debt and equity interests of the magnitude that the Commission would deem attributable can foster economic competition, viewpoint diversity, and minority ownership, yet remain passive. If the Commission nonetheless adopts the proposal, it should grandfather existing licensees' financial arrangements.

Respectfully Submitted,

QWEST BROADCASTING L.L.C.

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